

In the Matter of EAGLE & PHENIX MILLS and TEXTILE WORKERS
ORGANIZING COMMITTEE

Case No. C-1280.—Decided October 11, 1939

Textile Manufacturing Industry—Discrimination: charges of, not sustained—*Testifying Under Act:* discharges for: charges of, not sustained—*Complaint:* dismissed.

Mr. Warren Woods, Mr. Alexander E. Wilson, Jr., and Mr. John C. McRée, for the Board.

Swift, Pease, Davidson & Swinson, by Mr. J. Q. Davidson and Mr. W. E. Swinson, both of Columbus, Ga., for the respondent.

Mr. Francis Hoague, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges and amended charges having been duly filed by the Textile Workers Organizing Committee, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint dated January 10, 1939, against Eagle & Phenix Mills, Columbus, Georgia, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union. With respect to the unfair labor practices, the complaint alleged in substance that the respondent, on June 24, 1938, discharged W. G. Partain, and on June 30, 1938, discharged Alice Gentry, and has at all times since refused to reinstate the said employees for the reason that they had joined and assisted a labor organization and for the reason that the said employees had testified under subpoena before a Trial Examiner appointed by the Board, and that by these acts and by other acts the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On January 24, 1938, the respondent filed a special appearance and motion to dismiss the complaint for lack of jurisdiction. On the same day the respondent filed a motion for further particulars, a motion to strike certain parts of the complaint, and an answer to the complaint, in which it denied that it was engaged in interstate commerce and that it had engaged in the unfair labor practices set forth in the complaint. Pursuant to notice and amended notice duly served upon the respondent and the Union, a hearing was held at Columbus, Georgia, from February 27 to March 1, 1939, before Peter F. Ward, the Trial Examiner duly designated by the Board. At the outset of the hearing, the Trial Examiner denied the respondent's motion to dismiss for lack of jurisdiction and the respondent's motion for further particulars.

During the course of the hearing, the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. At the close of the case the Trial Examiner stated that all parties might request oral argument before the Board in Washington, D. C., within 10 days after the service of the Intermediate Report upon them.

On May 5, 1939, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (4) and Section 2 (6) and (7) of the Act. He accordingly recommended that the respondent cease and desist from engaging in such unfair labor practices and that the respondent offer reinstatement to the two named employees with back pay from the date of their discharge.

Thereafter, the respondent duly filed a statement of exceptions to rulings upon motions, to rulings relating to the evidence, and to the Intermediate Report of the Trial Examiner. The respondent also filed a brief in which it stated that it did not desire to appear before the Board for oral argument. The Board has considered the exceptions to the Intermediate Report, and, except in so far as they are inconsistent with the findings, conclusions, and order set forth below, sustains them.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a Georgia corporation, operates a single manufacturing plant at Columbus, Georgia, devoted chiefly to the pro-

duction of cotton goods, including flannel, crochet thread, ball thread, and rope. Cotton comprises approximately 99 per cent of the value of the raw materials used. The respondent buys all of its cotton in Columbus, Georgia, and hauls it to the mill by truck. The respondent used 32,015 bales in the year ending August 31, 1937. The cotton comes from various States depending on the season and the crop. The respondent uses each month approximately 20 tons of coal, shipped by rail from mines in Alabama. Dyestuffs are obtained from the duPont Company and are shipped to the mill from a duPont branch in Charlotte, North Carolina. The principal processes carried on in the mill are picking, carding, spinning, weaving, sanforizing, finishing, and dyeing. The respondent manufactured about 15,000,000 pounds of goods in the year ending August 31, 1937, and during this period sold 13,800,000 pounds. Approximately 90 per cent of the products sold by the respondent are shipped outside of Georgia, principally to customers in New York, Chicago, and Baltimore. The respondent employs approximately 1,800 weekly paid employees.

II. THE ORGANIZATION INVOLVED

Textile Workers Organizing Committee is a labor organization affiliated with the Congress of Industrial Organizations, having members in the respondent's plant.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

After a hearing before a Trial Examiner duly designated by the Board, the Board on January 18, 1938, issued a Decision and Direction of Election¹ to ascertain the representatives for collective bargaining with the respondent. Pursuant thereto an election by secret ballot was conducted on February 2, 1938, at Columbus, Georgia. After the Union had filed charges alleging that the respondent had engaged in unfair labor practices within the meaning of Section 8 (1) of the Act, the Board issued an order reopening the record in the representation case and directed that that case be consolidated with a proceeding in respect to the unfair labor practices. The Board then issued a complaint and an amended complaint alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act. Pursuant to notice, a hearing was begun on June 6, 1938, at Columbus, Georgia, before a Trial

¹ *Matter of Eagle-Phenix Mills and Textile Workers Organizing Committee*, 4 N. L. R. B. 966.

Examiner duly designated by the Board. On motion of the respondent the Trial Examiner adjourned the hearing until June 13, 1938, when it resumed and continued until June 21. It was at this hearing that the two employees named in the complaint in the instant proceedings gave testimony. On February 16, 1939, the Board issued its Decision, Order, and Second Direction of Election² in which it found that the respondent had engaged in unfair labor practices within the meaning of Section 8 (1) of the Act. The Board ordered the respondent to cease and desist from such unfair labor practices and directed the Regional Director for the Tenth Region (Atlanta, Georgia) to conduct an election among the respondent's employees within the appropriate unit at such future time as the Board might determine.

B. The discharge of Alice Gentry

Gentry was first employed by the respondent as a spinner sometime around 1921. She worked in that position until 1926 when she quit voluntarily. In November 1936 she returned to her old job and worked more or less continuously until her discharge on June 30, 1938. On June 11, 1938, Gentry was subpoenaed and testified as a witness on behalf of the Board on June 14, 1938. Her testimony concerned coercive statements made by W. G. Huguley, the overseer of the spinning department, shortly prior to an election conducted by the Board. This testimony, similar in content to that of over 30 other witnesses for the Board, was adverse to the respondent in connection with the issues then being litigated.

The reason given by the respondent for her discharge on June 30, 1938, was that she was a poor spinner and was at that time turning out increasingly bad work. On the morning of June 29, approximately 16 imperfect bobbins, known as "singles," were found on the machines on which she had worked the previous evening. Some of the singles were "inside" singles, which are a more troublesome type because they are less noticeable and are therefore more likely to get into the finished cloth. Cloth into which a single has been woven cannot be sold as first-grade material. Gentry complained of poor eyesight. The existence of inside singles could be brought about by an inability to distinguish between the shades of the threads. The respondent proved that Gentry had previously been reprimanded often for poor work and had on May 27, 1938, been laid off for bad work. Upon finding this large number of singles on June 29, Gentry's superior determined to discharge her. She was away from work on June 29 because of illness. On June 30

² *Matter of Eagle & Phenix Mills and Textile Workers Organizing Committee*, 11 N. L. R. B. 361.

when she appeared for work she was shown some of the singles which she had made and was thereupon discharged.

Several witnesses testified that although Gentry had not been one of the best spinners, she was, nevertheless, an average spinner. When, on cross-examination, these witnesses were asked to name a spinner of less ability than Gentry, they were unable to do so.

In view of the fact that for several months Gentry had undoubtedly done poor work and had been reprimanded and disciplined for it, and also in view of the fact that a large number of witnesses testified similarly at the previous hearing and were not discharged, we find that she was not discharged because she gave testimony at the Board hearing.

No attempt was made to show that Gentry had engaged in union activity other than that she had joined the Union and had given testimony which supported the allegations of its previous charge. No attempt was made to connect the discharge with the fact that Gentry had joined the Union. Therefore, the allegation of the complaint that Gentry was discharged because she joined and assisted a labor organization will also be dismissed.

C. The discharge of W. G. Partain

Partain was first employed by the respondent on April 6, 1937. For 3½ months he performed various jobs, and thereafter held the position of filling hauler. His duties were to supply the looms with weaving material called "filling." On June 14, 1938, Partain gave testimony at the Board hearing, similar to that given by Gentry. On June 24, 1938, his superior told him that he would lay him off hauling work but would put him to cleaning looms where there was a temporary vacancy. On the following Monday, June 27, the regular loom cleaner returned to work and Partain was laid off.

The respondent's reason for laying off a filling hauler at this time was that the department was changing from heavier to finer fabric, and there was less filling to be hauled. This was not disputed at the hearing. Before the lay-off the respondent employed, as filling haulers in this department, J. B. Gresham and Gene Wyatt in addition to Partain. Whereas Gresham and Wyatt, both of whom had been hired prior to Partain, had families, Partain was single and his mother and father worked at the respondent's mill. Gresham had been a head filling hauler and a lease-out man, both jobs involving more than ordinary skill and intelligence. The respondent established at the hearing that the factors which it used in determining who of the employees be laid off were: (1) when the employee was first hired, (2) his ability, and (3) his dependents. In

view of this we can find nothing discriminatory in the lay-off of Partain rather than Gresham and Wyatt.

An attempt was made to show that following Partain's lay-off the respondent had hired certain new employees to do filling hauling or other work that Partain could have performed. Without elaborating the details, it is sufficient to say that in each case there was some convincing reason for hiring the man in preference to Partain. We find that Partain was not laid off or refused reemployment because he gave testimony at the Board hearing.

As in the case of Gentry no attempt was made to show that Partain had assisted a labor organization other than by joining and by giving testimony supporting its charge. Nothing in the record connects Partain's discharge with the fact of his having joined the Union. Therefore, the allegation of the complaint that Partain was discharged because he joined and assisted the Union will be dismissed.

D. Alleged interference, restraint, and coercion

The only evidence in the record of separate interference, restraint, and coercion was that given by Partain and Gentry at the previous hearing and incorporated into the record in this hearing. The purpose of its incorporation was to establish that these two employees had testified in a Board hearing adversely to the respondent. Their testimony has been considered by us previously and an Order issued to remedy the situation created by the unfair labor practices to which they testified.³

In this situation there is no need for us to consider it again.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. The operations and business of the respondent constitute a continuous flow of trade, traffic, and commerce among the several States, within the meaning of Section 2 (6) of the Act.

2. Textile Workers Organizing Committee is a labor organization, within the meaning of Section 2 (5) of the Act.

3. The respondent has not discriminated against Alice Gentry or W. G. Partain because they gave testimony under the Act, within the meaning of Section 8 (4) of the Act.

4. The respondent has not discriminated in regard to hire or tenure of employment, or any term or condition of employment, of Alice

³ *Matter of Eagle & Phenix Mills and Textile Workers Organizing Committee*, 11 N. L. R. B. 361.

Gentry or W. G. Partain, thereby encouraging or discouraging membership in any labor organization, within the meaning of Section 8 (3) of the Act.

5. The respondent has not, by discharging Alice Gentry and W. G. Partain, interfered with, restrained, or coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, within the meaning of Section 8 (1) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed.